

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

**COUNTY OF OSWEGO INDUSTRIAL
DEVELOPMENT AGENCY,**

Plaintiff,

-v-

5:05-CV-926

**FULTON COGENERATION ASSOCIATES, LP.,
LIONS CAPITAL MANAGEMENT, LLC, aka LION
CAPITAL MANAGEMENT, LLC, FIMAB,
PROMENEUR & HAUSMANN, INC., EL PASO
MERCHANT ENERGY-PETROLEUM COMPANY.,
and ANR VENTURE FULTON COMPANY,**

Defendants.

APPEARANCES:

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Syracuse, New York 13221
Attorneys for Plaintiff

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LLC, and Fimab, Promeneur & Hausmann, Inc.

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Attorneys for El Paso Merchant Energy-Petroleum Company and
ANR Venture Fulton Company

Hon. Norman A. Mordue, Chief United States District Judge:

MEMORANDUM-DECISION AND ORDER**INTRODUCTION**

Plaintiff sues to recover more than \$4.7 million allegedly owed to plaintiff by defendant Fulton Cogeneration Associates, LP. ("FCA") under a Payment in Lieu of Taxes Agreement (see Amended Complaint, Dkt. No. 9). On March 31, 2006, this Court granted an order of attachment (Dkt. No. 41) relating to claims and rights of FCA in litigation against The New York Chocolate and Confections Company ("NYCCC"). This Memorandum-Decision and Order addresses two motions pending before the Court: first, plaintiff's motion (Dkt. No. 45) for an order modifying the order of attachment to include a certain turbine and other equipment of FCA and to extend the time for plaintiff to commence a special proceeding; and second, FCA's cross motion (Dkt. No. 70) to require re-service of the order of attachment.

BACKGROUND

On March 22, 2006 (Dkt. No. 38) the Court granted plaintiff's motion for an order of attachment relating to the claims and rights of FCA in litigation pending in New York Supreme Court, County of Oswego, captioned *Fulton Cogeneration Associates, LP. v. The New York Chocolate and Confections Company*, Index No 1185/05 ("Oswego County Action"), and any debts owed to FCA in connection therewith. The Court signed an order of attachment on March 31, 2006 (Dkt. No. 41).

Plaintiff moved on June 16, 2006 (Dkt. No. 45) to modify the order of attachment to include a certain turbine and other equipment of FCA, and to extend the time for plaintiff to commence a special proceeding pursuant to N.Y.C.P.L.R. 6214(d). On June 20, 2006, the Court signed an Order to Show Cause (Dkt. No. 47) scheduling the motion and extending the temporary

restraining order.

On June 20, 2006, FCA recovered partial summary judgment in excess of \$1.3 million in the Oswego County Action (see Dkt. No. 71, Exh. A, Order and Judgment signed by Norman W. Seiter, Jr., J.S.C.). Judgment in that action was entered August 21, 2006.

This Court stayed proceedings in the instant case on July 11, 2006 (Dkt. No. 55) due to the motion by FCA's counsel for leave to withdraw from further representation of FCA. FCA appeared by new counsel. The stay was lifted on October 13, 2006 (Dkt. No. 69).

On October 21, 2006, FCA cross-moved (Dkt. No. 70) to require re-service of the order of attachment.

DISCUSSION

The Court first addresses so much of plaintiff's motion of June 16, 2006 (Dkt. No. 45) as seeks to modify the order of attachment to include a certain turbine and other equipment of FCA. FCA has not objected to this relief. In its Memorandum-Decision and Order dated March 22, 2006 (Dkt. No. 38), this Court determined that plaintiff has demonstrated a probability of success on the merits and has shown that the financial position of FCA poses a real risk of the enforcement of a future judgment. This part of plaintiff's motion is granted.

The Court turns to that part of plaintiff's June 16, 2006 motion as seeks to extend the time for plaintiff to commence a special proceeding pursuant to N.Y.C.P.L.R. 6214(d). The Court has reviewed FCA's opposing papers and its cross-motion (Dkt. No. 70) to require re-service of the order of attachment. The Court concludes that plaintiff has established its entitlement to the relief requested and that the cross motion must be denied.

The motion (Dkt. No. 18) by defendants El Paso Merchant Energy-Petroleum Company

and ANR Venture Fulton Company will be addressed separately.

CONCLUSION

It is therefore

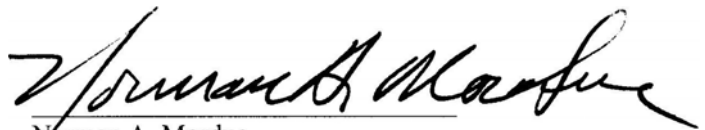
ORDERED that plaintiff's motion (Dkt. No. 45) is granted; and it is further

ORDERED that the cross motion by Fulton Cogeneration Associates, LP. (Dkt. No. 70) is denied; and it is further

ORDERED that the Court will sign an order submitted by plaintiff in accordance herewith.

IT IS SO ORDERED.

March 9, 2007
Syracuse, New York



Norman A. Mordue
Chief United States District Court Judge